

REMARKS

The Office action mailed February 22, 2007 has been received and reviewed. All claims currently under consideration stand rejected. The application is to be amended as previously set forth. All amendments and claim cancellations are made without prejudice or disclaimer. No new matter has been added. Reconsideration is respectfully requested.

A. Personal Interview:

Applicants would like to thank the Examiner for the courtesy extended applicants' representatives at the personal interview of April 3, 2007. As described in the Examiner Interview Summary:

"Rejection of claims under 35 USC 101, 103 and 112, first paragraph. Applicants will make appropriate amendments to the claim[s] to overcome the rejections."

Applicants' representative believes that the Interview Summary, together with the instant Amendment adequately describes the substance of the interview. If, however, the Office would like further information, the Examiner is kindly requested to contact applicants' undersigned representative, and further detail will be promptly provided.

B. 35 U.S.C. § 103:

The claims currently under consideration stand rejected under 35 U.S.C. § 103, as assertedly being obvious over Brines et al. in view of Berg et al. Applicants have amended the claims as discussed at the interview, and, in view thereof, respectfully request that the rejection be withdrawn.

Specifically, the claims have been amended to recite the deposited cell line in the claims. As discussed in the as-filed application at paragraph [0008]:

"Preferably, EPO has been recombinantly produced on a host cell that expresses at least the E1A protein of an adenovirus, more preferably on a host cell derived from a PER.C6TM cell. Although the use of EPO to protect the myocardium from acute ischemic injury has been described (see WO 00/61164, WO 01/82952), the EPO used may cause a concomitant significant increase in hematocrit values, which can be regarded as an undesired side effect for this application. The use of EPO derived from PER.C6TM or another E1A-expressing host cell, leads to less of this side effect and, therefore, is beneficial (see also PCT/NL02/00686 for the

demonstration that EPO produced on PER.C6™ is functional but gives rise to less increase in hematocrit values when compared with a commercially available EPO preparation (EPREX®)).”

Thus, the EPO produced by the deposited cell line has an unexpected and non-obvious benefit. It is thus respectfully submitted that the rejection has been overcome.

C. 35 USC §§ 112 & 101:

The claims currently under consideration stand rejected for use of the terminology “chronic heart failure”, which was thought to be “new matter”. As discussed at the interview, however, the terminology is used, for instance, in paragraph [0014] of the as-filed patent application,

“Cardiac failure, also called heart failure, or chronic heart failure or congestive heart failure, is defined as a heart disease in which the heart is not able to pump blood at a rate required by the metabolizing tissues, or when the heart can do so only with an elevated filling pressure.”

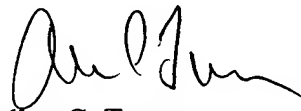
Hence, applicants thus respectfully request that the rejection be withdrawn.

Claim 2 also rejected for not complying with Office rules respecting the deposit requirements, *e.g.*, as they relate to the Budapest Treaty. Submitted herewith is a Budapest Treaty Declaration, which should overcome the rejection.

The claims currently under consideration also stand rejected under both 35 U.S.C. §§ 112 and 101 for not being directed to an “isolated” host cell. As discussed at the interview and suggested by the Examiner, the claims have been amended to include the “isolated” terminology, and applicants thus request that the rejections be withdrawn.

In view of the foregoing amendments and remarks and further in view of the discussions at the personal interview, applicants believe that the application is in condition for allowance, and a notice of allowance is kindly solicited. If questions remain after consideration of the foregoing, however, the Office is kindly requested to contact applicants' attorney at the address or telephone number given herein.

Respectfully submitted,



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Enclosures: Budapest Treaty Declaration (PER.C6)